

07 SEP 13 2:50  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
FILED 530  
MGP

1 **PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

2 Name Horne Joseph J (Last) (First) (Initial)

3 Prisoner Number # V-84328 **E-filing**

4 Institutional Address 888-8-8 9000X-7500

5 Crescent City, CA 95532

6  
7 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

8 Joseph Deon Horne  
(Enter the full name of plaintiff in this action.)

9 vs.

10 Warden Robert Hurel  
11 \_\_\_\_\_  
12 \_\_\_\_\_  
13 \_\_\_\_\_

14 (Enter the full name of respondent(s) or jailor in this action)  
15 \_\_\_\_\_

**C } 07 4592**

16 Case No. \_\_\_\_\_  
(To be provided by the clerk of court) **CBA**

17 **PETITION FOR A WRIT  
OF HABEAS CORPUS (PR)**

18 **Read Comments Carefully Before Filling In**

19 **When and Where to File**

20 You should file in the Northern District if you were convicted and sentenced in one of these  
21 counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa,  
22 San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in  
23 this district if you are challenging the manner in which your sentence is being executed, such as loss of  
24 good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

25 If you are challenging your conviction or sentence and you were not convicted and sentenced in  
26 one of the above-named fifteen counties, your petition will likely be transferred to the United States  
27 District Court for the district in which the state court that convicted and sentenced you is located. If  
28 you are challenging the execution of your sentence and you are not in prison in one of these counties,  
your petition will likely be transferred to the district court for the district that includes the institution  
where you are confined. Habeas L.R. 2254-3(b).

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or  
 3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which  
 4 you are imprisoned or by whom you were convicted and sentenced. These are not proper  
 5 respondents.

6 If you are not presently in custody pursuant to the state judgment against which you seek relief  
 7 but may be subject to such custody in the future (e.g., detainers), you must name the person in whose  
 8 custody you are now and the Attorney General of the state in which the judgment you seek to attack  
 9 was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda  
 13 County Superior Court, Oakland):

14 Alameda County Superior Court, Oakland

15 Court Location

16 (b) Case number, if known SS030908

17 (c) Date and terms of sentence April 28<sup>th</sup> 2007 (Attache)

18 (d) Are you now in custody serving this term? (Custody means being in jail, on  
 19 parole or probation, etc.) Yes ✓ No \_\_\_\_\_

20 Where?

21 Name of Institution: Reedem Bay State Prison

22 Address: P.O. Box 7500 Crescent City CA 95531

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for  
 24 more than one crime, list each crime separately using Penal Code numbers if known. If you are  
 25 challenging more than one sentence, you should file a different petition for each sentence.)

26 Please see attached sheet labeled  
 27 'Attached Document to Federal Writ'  
 28 'of H.C.'

1                   3. Did you have any of the following?

2                   Arraignment:                   Yes            No \_\_\_\_\_

3                   Preliminary Hearing:           Yes            No \_\_\_\_\_

4                   Motion to Suppress:           Yes            No

5                   4. How did you plead?

6                   Guilty \_\_\_\_\_   Not Guilty    Nolo Contendere \_\_\_\_\_

7                   Any other plea (specify) \_\_\_\_\_

8                   5. If you went to trial, what kind of trial did you have?

9                   Jury            Judge alone \_\_\_\_\_           Judge alone on a transcript \_\_\_\_\_

10                  6. Did you testify at your trial?                   Yes            No \_\_\_\_\_

11                  7. Did you have an attorney at the following proceedings:

12                  (a)           Arraignment                   Yes            No \_\_\_\_\_

13                  (b)           Preliminary hearing           Yes            No \_\_\_\_\_

14                  (c)           Time of plea                   Yes            No \_\_\_\_\_

15                  (d)           Trial                           Yes            No

16                  (e)           Sentencing                   Yes            No \_\_\_\_\_

17                  (f)           Appeal                           Yes            No \_\_\_\_\_

18                  (g)           Other post-conviction proceeding           Yes            No \_\_\_\_\_

19                  8. Did you appeal your conviction?                   Yes            No \_\_\_\_\_

20                  (a)           If you did, to what court(s) did you appeal?

21                  Court of Appeal                           Yes            No \_\_\_\_\_

22                  Year: 2006           Result: Conceded appeal

23                  Supreme Court of California                   Yes            No \_\_\_\_\_

24                  Year: 2007           Result: Denied

25                  Any other court                           Yes \_\_\_\_\_           No

26                  Year: \_\_\_\_\_           Result: \_\_\_\_\_

28                  (b)           If you appealed, were the grounds the same as those that you are raising in this

1 petition? Yes  No \_\_\_\_\_

2 (c) Was there an opinion? Yes  No \_\_\_\_\_

3 (d) Did you seek permission to file a late appeal under Rule 31(a)?

4 Yes \_\_\_\_\_ No

5 If you did, give the name of the court and the result:

6 \_\_\_\_\_  
7 \_\_\_\_\_

8 9. Other than appeals, have you previously filed any petitions, applications or motions with respect to  
9 this conviction in any court, state or federal? Yes  No \_\_\_\_\_

10 [Note: If you previously filed a petition for a writ of habeas corpus in federal court that  
11 challenged the same conviction you are challenging now and if that petition was denied or dismissed  
12 with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit  
13 for an order authorizing the district court to consider this petition. You may not file a second or  
14 subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28  
15 U.S.C. §§ 2244(b).]

16 (a) If you sought relief in any proceeding other than an appeal, answer the following  
17 questions for each proceeding. Attach extra paper if you need more space.

18 I. Name of Court: California Supreme Court

19 Type of Proceeding: Petition for Writ of Habeas Corpus

20 Grounds raised (Be brief but specific):  
*See attached documents.*

21 a. \_\_\_\_\_

22 b. // //

23 c. // //

24 d. // //

25 Result: Denied. Date of Result: July 25, 2007

26 II. Name of Court: \_\_\_\_\_

27 Type of Proceeding: \_\_\_\_\_

28 Grounds raised (Be brief but specific):

1 a. \_\_\_\_\_

2 b. \_\_\_\_\_

3 c. \_\_\_\_\_

4 d. \_\_\_\_\_

5 Result: \_\_\_\_\_ Date of Result: \_\_\_\_\_

6 III. Name of Court: \_\_\_\_\_

7 Type of Proceeding: \_\_\_\_\_

8 Grounds raised (Be brief but specific):

9 a. \_\_\_\_\_

10 b. \_\_\_\_\_

11 c. \_\_\_\_\_

12 d. \_\_\_\_\_

13 Result: \_\_\_\_\_ Date of Result: \_\_\_\_\_

14 IV. Name of Court: \_\_\_\_\_

15 Type of Proceeding: \_\_\_\_\_

16 Grounds raised (Be brief but specific):

17 a. \_\_\_\_\_

18 b. \_\_\_\_\_

19 c. \_\_\_\_\_

20 d. \_\_\_\_\_

21 Result: \_\_\_\_\_ Date of Result: \_\_\_\_\_

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes \_\_\_\_\_ No

24 Name and location of court: \_\_\_\_\_

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to  
27 support each claim. For example, what legal right or privilege were you denied? What happened?

28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent  
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,  
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: See attached document.

6

7 Supporting Facts: See attached document.

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11 Claim Two: See attached document.

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13 Supporting Facts: See attached document.

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17 Claim Three: See attached document.

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19 Supporting Facts: See attached document.

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23 If any of these grounds was not previously presented to any other court, state briefly which  
24 grounds were not presented and why:

25

26

27

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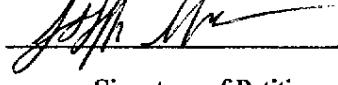
1 List, by name and citation only, any cases that you think are close factually to yours so that they  
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning  
3 of these cases:

4 Please see attached documents

5  
6  
7 Do you have an attorney for this petition? Yes        No ✓

8 If you do, give the name and address of your attorney:  
9 \_\_\_\_\_

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in  
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12  
13 Executed on August 8th 2007   
14 Date Signature of Petitioner

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20 (Rev. 6/02)

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Page # 2

A. Information About Your Conviction and Sentence.

Continuing Section (1) Part (c).  
The court imposed a term of life without parole for the murder (Count 1) plus a consecutive life indeterminate life term for using a firearm; a consecutive life indeterminate life term for attempted murder (Count 2) plus a 20 year firearm enhancement; a consecutive life term for shooting at an occupied vehicle (Count 6); a consecutive life term for shooting at an occupied dwelling (Count 8); a consecutive determinate term of three years for selling drugs (Count 7) plus a four-year gang enhancement; and a consecutive eight month term for making a criminal threat (Count 5). The court imposed additional terms and enhancements but stayed them under section 654.

Page #2

A. Information About Your convictioncontinue part (a)(2)

count one, murder with a "criminal street gang" special circumstance and enhancement for discharging a firearm and causing great bodily injury and death and committing the offense for the benefit of a criminal street gang (Pen. Code §§ 187, 186.22, subd. (b)(1), 190.2, subd. (a)(22), 12022.53, subd. (c) and (d)); count two, attempted murder with gang and firearm discharge enhancements (§§ 664, 187, 186.22, subd. (b)(1)); count three, assault with a firearm with a gang enhancement (§ 245, subd. (a)(2), 186.22, subd. (b)(1)); count five, making criminal threats (§ 422); count six, shooting at an occupied vehicle with a gang enhancement (§ 246, 186.22, subd. (b)(1)); count seven, sale or transportation of a controlled substance with a gang enhancement (Health & Saf. Code, § 11352; § 186.22, subd. (b)(1) & (b)(4)(B); (b)(1)); count eight, shooting at an inhabited dwelling with gang enhancements (§ 246, 186.22, subds. (b)(1) & (b)(4)(B)); count nine, assault with a firearm with a gang enhancement (§ 245, subd. (a)(2), 186.22, subd. (b)(1)).

1 Attached document of federal wkt of hc.  
 2 contains page -4- Section (a) Part I

3 (a) Trial defense counsel rendered ineffective  
 4 assistance of counsel when he failed to  
 5 protect petitioner from abusive cross-  
 6 examination by the prosecutor...

7 (b) Trial (trial) counsel rendered ineffective  
 8 assistance when he refused to present  
 9 petitioner's direct testimony by the normal  
 1 question and answer method; instead, defend-  
 2 defense counsel did not participate in direct  
 3 examination; he did not prepare petitioner  
 4 for direct examination; he required peti-  
 5 tioner to present his own testimony by  
 6 narrative summary...

7 (c) Defense counsel rendered ineffective  
 8 assistance when he failed to object to non-  
 9 qualifying crimes being used to prove the  
 1 street gang special circumstance and the  
 2 street gang enhancement...

1 (d) Defense counsel rendered ineffective  
 2 assistance of counsel when he failed to object  
 3 to hearsay evidence that co-defendant Samantha

4 Smith pled guilty to the crime of accessory  
 5 after the fact for shooting at Beverly Jones  
 6 House...

7 (E) The conviction should be reversed for  
 8 cumulative error...

9 (F) Defense counsel rendered ineffective assistance  
 1 by failing to object to the verdict and sentence for  
 2 premeditated aspect of attempted murder on the ground  
 3 that the enhancement of premeditated was not  
 4 plead as required...

Continue page #6 part B. "Grounds for relief".

Claim one: Trial court erred and or trial counsel rendered ineffective assistance of counsel when they failed to protect petitioner from abusive cross examination from abusive cross examination by the prosecutor or... petitioner was denied a fair trial. (Please view constitutional violations on additional page.) Prosecutor committed misconduct...

Continue: Supporting facts of claim one: At trial while petitioner was on the stand being cross examined by the prosecutor neither trial counsel or trial Judge protected him. The prosecutor asked petitioner more than 40 improper questions. Petitioner's trial counsel sat mute during the entire cross examination. Petitioner absolutely no objections. He did not participate. After trial counsel notified the courts that he did not understand the narrative summary the courts did nothing to be sure counsel understood his position.

Continue claim two: Trial counsel rendered ineffective assistance of counsel when he refuse to ~~cross~~ - present ~~cross~~ petitioner's direct testimony... by the norm ~~cross~~ petitioner's direct testimony... by the norm of question and answer method, instead defense counsel did not participate in direct examination. He did not prepare petitioner for examination. He required petitioner direct examination by narrative to present his own testimony by narrative summary... (Please view U.S. constitutional violations on additional page.) Petitioner was denied right to a fair trial... It further violated petitioner's right to effective assistance of counsel.

Continue supporting facts of claim two: Page 6-  
 A defendant may be required to testify by narrative summary but "only" if he has admitted guilt to his lawyer... and wish to give testimony contrary to the truth. Here, trial counsel refuse to participate during Petitioner's direct testimony telling the courts he had an "ethical obligation". At no time did Petitioner admit any guilt to defense trial counsel. Nor did Petitioner tell trial counsel that he wished to testify contrary to the truth. In other words, give perjured testimony. Trial counsel did absolutely nothing to prepare Petitioner for direct examination.

Continue claim three:

Defense counsel rendered ineffective assistance when he failed to object to hearsay evidence that co-defendant Barnabitha Smith pled guilty to the crime of accessory after the fact for shooting at Beverly Jones' house. Trial court erred in admitting evidence of a non-testifying co-defendant's guilty plea.

Continue supporting facts of claim three:

trial counsel failed to object to documents of a co-defendant's guilty plea. The documents was never discussed in court but merely moved into evidence at the end of trial. These documents were reviewed by the jury as evidence even though the co-defendant invoked his 5th Amendment right. Trial courts allowed as documents of a non-testifying co-defendant's plea...

Continue classon four: page 6-

Defense counsel rendered ineffective assistance by failing to object to the verdict and sentence for the premeditated aspect of attempted murder on the grounds that the enhancement of premeditation was not pleaded as required. (Please view U.S. constitutional violations on additonal page).

Continue support facts for classon four:

Petitioner was convicted and sentence on the charge of the premeditated aspect of attempted murder without it ever being pleaded. Petitioner never received notice of such charge, although the request for notice and plea of all charges has been long settled. Trial counsel failed to object to the verdict and trial counsel failed to object to the verdict and sentence of ~~order~~ ~~not plead~~ this charge that Petitioner never received notice of or did not plead to.

Continue classon five:

The trial court erred regarding the predicate felonies used for the gag special circumstances and the several gag enhancements. Defense counsel rendered ineffective assistance when he failed to object to non-qualifying crime being used to prove the street gag special circumstances and the street gag enhancement.

Continue support facts of classon five:

The prosecutor used seven different crimes to prove the gag special circumstances and the several gag enhancements. These were all separate acts. The court failed to instruct the jury that it must be unanimous as to which two or more crimes it relied upon. At least 4 of the charges did not qualify as predicate offenses. Trial counsel failed to object to these non-qualifying offenses. Even though he had knowledge that they were committed by several persons.

Attachment 6 document of Federal Bureau of U.S. -  
Page 6  
Constitute Grounds for Relief... U.S. constitutional  
violations for each claim.

Claim one is U.S. constitutional violations:  
Violation of U.S. Constitution 5th and 14th  
Amendments. Also it violates Petitioners  
6th Amendment.

Claim two is U.S. constitutional violations:  
Violation of U.S. Constitution 5th, 14th and  
6th Amendments.

Claim three: U.S. constitutional violations:  
Violation of U.S. Constitution 6th and 14th  
Amendment.

Claim four U.S. constitutional violations:  
Violates U.S. Constitution, 6th, 5th and 14th  
Amendment.

Claim Five: U.S. constitutional violations:  
It violates U.S. Constitution 5th and 14th  
Amendments.

Claim Six U.S. constitutional violations:  
5th & 6th Amendment.

Claim Seven: U.S. constitutional violations:  
5th Amendment and 6th Amendment.

Page #7

Continuation list of supporting cases.People v. Hill (1988) 17 Cal. 4th 800People v. Hill (1984) 37 Cal. 3d 436People v. Jackson (1986) 177 Cal. App. 3d 708People v. Johnson (1998) 62 Cal. App. 4th 608People v. Koontz (2002) 27 Cal. 4th 1041People v. Lee (1994) 28 Cal. App. 4th 1724People v. Melton (1988) 44 Cal. 3d 713People v. Nation (1980) 26 Cal. 3d 412People v. ~~People~~ (1979) 23 Cal. 3d 412People v. Robles (1970) 2 Cal. 3d 205People v. Sanchez (1985) 170 Cal. App. 3d 216People v. Seal (2004) 34 Cal. 4th 535People v. Seagull (1982) 138 Cal. App. 3d 34Apprendi v. New Jersey (2000) 530 U.S. 436Bergen v. United States (1935) 295 U.S. 78Brewer v. Williams (1977) 436 U.S. 18Chapman v. California (1967) 386 U.S. 36Crawford v. Washington (2004) 541 U.S. 36Eggert v. Superior Court (2004) 120 Cal. App. 4th 1306Faretta v. California (1975) 422 U.S. 806, 45 L. Ed. 2d 562Garden v. Washington (1963) 372 U.S. 335In re Arturo R. (2001) 87 Cal. App. 4th 348In re Joseph S. (1983) 34 Cal. 3d 952In re Michael S. (1983) 141 Cal. App. 3d 814In re Washington (1970) 397 U.S. 358Jackson v. Virginia (1979) 443 U.S. 307

Attached documents of Federal and N.C.

Page #7

Continued list of supporting cases...

Johnson v. Zerbst (1938) 304 U.S. 458Jones v. Smith (9th Cir. 2000) 231 F.3d 1227Nix v. Whidbey (1986) 475 U.S. 157, 89 L.Ed. 2d 123Ohio v. Roberts (1980) 448 U.S. 56People v. Allen (1986) 42 Cal. 3d 1222People v. Benavides (2005) 35 Cal. 4th 64People v. Borelli (1996) 12 Cal. 4th 652People v. Carrasco (1989) 49 Cal. 3d 291People v. Cuernavaca (1993) 4 Cal. 4th 1233People v. Duran (2002) 97 Cal. App. 4th 1448People v. Espinoza (1992) 3 Cal. 4th 806People v. Gudino (1993) 19 Cal. App. 4th 1700People v. Guzman (1988) 45 Cal. 3d 915People v. Zumbado (2004) 124 Cal. App. 4th 228Saxone v. United States (1960) 361 U.S. 668United States v. Cronic (1984) 466 U.S. 648United States v. Sanchez (9th Cir. 1999) 176 F.3d

1214.

Case 4:07-cv-04592-SBA Document 1 Filed 09/05/2007 Page 17 of 18  
~~Attached is a copy of the Federal Rules of Civil Procedure.~~  
Continue Page 6 Additional Grounds (class action)  
Class Six:

Appellant's Improper conviction of criminal threats, Penal code §422, Prejudiced the entire case....

~~Supporting facts of class set:  
Assessment~~

Appellant was charged in court with making criminal threats, Penal Code 422, against his fiance Lisa Welch and her father Samuel Guy Rhone. Lisa's older cause was at the Nations Market parking lot. Rhone overheard someone, who was not visible, say if he did not get his money, he'd "blow away" or "smoke" the Welch family, starting with Lisa and the baby. Jeremy Welch told the speaker was Appellant. Lisa's father, Samuel told officer Gonzales that he overheard Appellant threaten Lisa on the telephone. Appellant wanted his money back regarding the car. Other wise, he was going to kill them. The trial courts improperly allowed the Rhone testimony that Lisa said Appellant "had assaulted her in the past, telling the jury he has hit, punched, and kicked her on numerous occasions. These statements were highly prejudicial. The courts improperly allowed these hearsay statements to be heard by the jury regarding the threats.

## Class Seven:

The trial court erred in admitting officer Beltran's opinion that Castille was "a witness" and that Castille was "in the area when the shooting occurred".

support key facts for class 7 Seven

~~supporting facts.~~ -  
In cassette tape statement to officer Berr,  
area, the jury was allowed to hear, over defense  
objection, Bertram's prearrangeable. (Please  
view U.S. Constitution - Constitution vestiges  
on addendum page for count 205th 6 and 7.

